

11.15.00.00 - STATE AS LESSEE LEASES

11.15.01.00 General

Property Management may receive requests to rent or lease privately owned properties or facilities for state highway purposes. Properties or facilities may include, but not be limited to, real property, trailers, or portable buildings.

S&H Code Section, 104 (d), authorizes the Department to lease office space for state highway purposes. Government Code, Section 11005, limits this authority by stating, "this section does not apply to the acquisition or hiring by the Department of Transportation of real property in fee or in any lesser estate or interest for highway purposes, **but does apply to the hiring by that department of office space in any office building.**"

Should Property Management receive a request for office space located in an office building, the request should be returned to the sender with a memorandum stating that Right of Way has no legal authority to enter into such leases and the request should be submitted to the Region/District Facilities personnel.

The majority of requests for these types of facilities will come from Construction to be utilized by resident engineers and their staffs for field facilities.

11.15.02.00 Procedures Upon Receiving Request

All requests for "state highway purpose" facilities shall be in writing and shall be signed by the District Division Chief of the office requesting the facility. All requests shall be sent to the DDC-R/W at least 120 days prior to the required occupancy date.

Property Management's first responsibility, upon receipt of a written request for field facilities, is to verify that there are no State-owned properties that can be utilized for said purpose. State-owned property may include vacant land and/or properties with improvements. State-owned property includes all properties owned by the Department and any other State agency.

The final decision whether or not the requestor occupies state-owned facilities will be made by Property Management.

If no suitable state-owned property is available, Property Management will canvass privately owned properties and/or facilities for acceptable accommodations. When rental market data on available space in the desired area has been gathered and the requesting office accepts Property Management's recommendation, the Agent shall begin the negotiations for lease or rental of the selected property.

11.15.03.00 Procedural Guidelines

Only Right of Way Staff shall negotiate with the owners for the lease of field facilities, provided they are for state highway purposes.

Only field employees, e.g., Construction and Surveys, assigned to the project will occupy the space.

When the District enters into a rental agreement or lease for field facilities, the following guidelines must be adhered to:

- Americans with Disabilities Act
- State Fire Marshal Approval of Plans and Inspections
- Seismic Performance Requirements
- State Administrative Manual Standards for State-Occupied Space
- Facility Plans and/or Drawings
- Energy Conservation
- Hazardous Materials Certification

11.15.03.01 **Americans with Disabilities**

The Americans with Disabilities Act (ADA) guarantees equal opportunity for individuals with disabilities in public and private sector services and employment. Title II of ADA specifies that a public agency may not, directly or through contractual arrangements, make selections, in determining the location of facilities, that have the effect of excluding or discriminating against persons with disabilities.

Department policy is that all facilities that are occupied by State employees, whether the facility is owned, rented or leased by the State, shall be in compliance with all ADA requirements. This includes full access for disabled employees, consultants, contractor employees and the public. Field facilities shall be such, as no one will be denied the opportunity to perform work or do business at the facility. **There are no exemptions or exceptions to this policy.**

ADA standards generally include requirements pertaining to functioning of wheelchairs in relation to site grading, parking lots, walks, ramps, entrances width of doors, floors, toilet facilities, signs, and other miscellaneous requirements.

The Department has adopted the Department of Rehabilitation's *Americans with Disabilities Act Access Guide: Survey Checklist* as the document for determining compliance with ADA. Agents are to utilize this Guide when determining if a facility is in compliance with ADA requirements.

Current regulations are found in the California Administrative Code, Title 24, State Building Standards and the Americans with Disabilities Act.

11.15.03.02 **State Fire Marshal Approval of Plans and Inspections**

Health and Safety Code, Section 13108, specifies that the State Fire Marshal (SFM) prepare and adopt building standards relating to fire protection in the design and construction of the means of egress and the adequacy of exits from, and the installation and maintenance of fire alarm and fire extinguishment equipment or systems in, any state institution or other state-owned building or in any state-occupied building.

Right of Way's policy is that the SFM is required to review and approve plans, prior to the execution of any lease, when the Department of Transportation (the Department) is locating into an existing building and there **will be tenant improvements** prior to occupation. District Property Managers are responsible for ensuring that appropriate SFM review of plans and/or inspections are accomplished prior to execution of all leases and that such information is contained in Form RW 11-27, State Fire Marshal Checklist. Form RW 11-28, Plan Approval Request, must accompany all plans to the SFM. See Exhibit 11-EX-31, Memorandum from California State Fire Marshal to the Department, dated August 10, 2001, outlining the requirements for the submittal of plans to the SFM.

If tenant improvements are not necessary, SFM plan review is not required. However, when a plan review is not required, a field inspection will be performed by the SFM to review, among other items, the exiting systems and possible hazardous conditions.

Trailers or portable buildings do not require the submittal of plans or an inspection. The Region/District must determine that applicable exiting requirements are met (for example, no padlocks or hasp-type fasteners are used on exit doors). Storage buildings or covered parking structures do not require a review or inspection by the SFM.

11.15.03.03 **Seismic Performance Requirements**

Right of Way's policy is that all facilities considered for state lease must be evaluated for the ability to meet a reasonable level of seismic performance, prior to the execution of any lease.

In order to determine if a building has met a reasonable level of seismic performance, the agent must complete Form RW 11-29, Seismic Screening Checklist. If the Seismic Screening Checklist results in a score of 20 or above, a Certification of Structural Evaluation, Form RW 11-30, must be completed. An independent licensed structural engineer must complete the Certification. This is the responsibility of the landlord. (See Form RW 11-31, Letter to Landlord.)

11.15.03.04 **Standards for State Space**

Prior to initiating negotiations for field facilities, Right of Way must verify the number of State employees who are going to occupy the facility. Once the number of occupants is verified, the standards for state space set forth in State Administrative Manual (SAM), Section 1321.14 (Exhibit 11-EX-42), must be adhered to.

Examples of space allocations are:	Supervisors	96-125 sq ft
	Engineers	80-100 sq ft
	Clerical	40-75 sq ft

The allowances are maximum guidelines that can be modified as necessary to meet specific job requirements. Detailed documentation is required when allowance modifications are made.

Right of Way should always avoid renting more space than is necessary, but it should rent sufficient space to accommodate staff, equipment, laboratory facilities, and meeting/conference rooms.

11.15.03.05 **Facility Plans and/or Drawings**

Facility site plans are required for all State as Lessee (SAL) leases. See Memorandum from California State Fire Marshal to the Department, dated August 10, 2001, for the specific requirements. The site plans must be attached to the Lease and kept in the file.

11.15.03.06 **Energy Conservation**

Executive Order D-16-00, Exhibit 11-EX-43, established a state sustainable building goal for all state buildings, including all leased property. The goal is "to site, design, deconstruct, construct, renovate, operate, and maintain state buildings that are models of energy, water, and material efficiency; while providing healthy, productive and comfortable indoor environments and long-term benefits to Californians."

For specific guidelines, recommendations, and information, refer to Web site <http://ciwmb.ca.gov/greenbuilding/TaskForce>.

11.15.03.07 **Hazardous Materials Certification**

Asbestos material in buildings comes in two forms: friable and nonfriable. Friable asbestos is defined as any material containing greater than 1% asbestos by weight that, when dry, can be crushed, pulverized or reduced to powder by hand pressure. This would typically be pipe wrapping, insulation, or fireproofing. Nonfriable asbestos is generally considered nonhazardous and is typically vinyl asbestos floor tile or asbestos roofing felts and shingles.

Current state policy dictates that all buildings built before calendar year 1980 must be certified in writing to be "Free from hazards from Asbestos Containing Material (ACM)." The certification must be provided by an Industrial Hygienist certified by the American Board of Industrial Hygiene (ABIH) or an Environmental Protection Agency (EPA) Asbestos Hazard Emergency Response Act (AHERA) Certified Inspector. If the building was constructed subsequent to calendar year 1980, a photocopy of the Occupancy Certificate issued by the city or county building department is all that is required. The Occupancy Certificate must be provided prior to the execution of the lease.

When referring to leased space in regard to asbestos, leased space includes common public areas, building maintenance and equipment areas, and plenums in the same heating, ventilating, and air conditioning zone and telephone closets.

Leased space with asbestos present may be considered. The lessor, however, must comply with the requirements stated above. The lease agreement must hold the lessor responsible for control of nonfriable ACM and ACM that has been enclosed or encapsulated, including an appropriate operations and maintenance program.

Also, current state policy dictates that all buildings built before calendar year 1980 must be certified as free of hazard from Lead Containing Materials (LCM). Paint chip samples must be collected by California Department of Health Services (DHS) Lead Certified Project Designer for laboratory analysis to determine lead content. Web sites for your assistance are:

<http://www.childlead.com/prevent.html>
<http://www.childlead.com/clppb.html>

These requirements are to be completed by the lessor prior to the lease execution by the State.

11.15.04.00 **Lease Form**

The renting or leasing of field facilities for the Department's use shall be accomplished as follows:

- **Permanent Buildings and Trailer Pads** - Exhibit 11-EX-30, State as Lessee Lease Agreement, shall be used. Significant modifications shall be approved by Legal prior to the execution of said lease.
- **Relocatable Buildings or Trailers** - The standard lease or rental agreement used by the relocatable building or trailer company may be used with additional clauses from Exhibit 11-EX-30, State as Lessee Lease Agreement, when appropriate. The lease/rental agreement shall include provisions for initial setup, maintenance during the lease term, and removal at the end of the lease. If utilized, the company's lease should be reviewed by Legal prior to the execution of said lease.

A clear and complete description of the property should be included on the lease form under Description, including physical address, square footage, and type of facility (e.g., light industrial, strip mall, residential, etc.).

11.15.04.01 **Lease Execution**

The DD or authorized delegate is authorized to execute all SAL agreements. There will be two original copies of the lease executed by all parties. The recommendation for approval of the DDC of the requesting function shall be shown on the lease.

11.15.04.02 **Lease Extension**

The Region/District may extend the term of existing leases.

11.15.04.03 **Triple Net Leases**

Triple net leases that require the State to pay for the lessor's future increased expenses for the leased property, such as taxes, insurance, utilities, and debt service, shall be avoided. Prospective lessors should be advised to include such items in their proposed rental rate.

11.15.05.00 **Insurance**

In obtaining a lease for field facilities, the Region/District may be faced with the lessor's demand that the state provide insurance coverage, either by paying a monthly fee to the lessor's insurance carrier or by purchasing its own policy. There are two types of insurance to be considered: (1) fire and hazard, and (2) liability.

The State is self-insured for all liability (including bodily injury and property damage) as well as any tort (such as fire and physical damage caused by one of our employees) affecting private property. The state's ability to insure itself is provided in Government Code, Section 11007.1-11007.74. If the owner would like written confirmation, contact Department of General Services (DGS), Office of Insurance and Risk Management, and request a letter of "Public Liability and Workers Compensation Insurance" on their letterhead.

Although there is no need to furnish insurance policy coverage on SAL leases, there may be instances when an owner will not accept our self-insurance status and will insist on coverage provided by an insurance policy. In those cases, the Department has the flexibility to obtain such policy coverage if it is the only way to secure the field facility. It may be prudent to renegotiate rental terms if purchase of an insurance policy is required.

DGS can obtain quotes for required fire and hazard coverage and secure a policy if requested. The cost of securing a policy is usually much less than paying the lessor's insurance carrier for the required coverage and may be available through a single policy. Insurance and Risk Management has provided a form, Exhibit 11-EX-32, to assist in obtaining fire and hazard coverage. The form should be completed and sent to DGS for cost quotations and purchase of appropriate policy coverage.

11.15.06.00 **Park and Ride Facility Leases**

S&H Code, Section 146.5, authorizes the Department to enter into agreements and leases with private owners for use of existing parking facilities or to develop parking facilities for the Park and Ride program. Typical examples are shopping centers and church parking lots.

The District Ridesharing Coordinator is responsible for the Program. Since *no rent is paid* for use of the facilities, the coordinator usually handles the entire transaction with a standard use agreement with no Right of Way involvement.

Legal recommends that the Department use a lease rather than an agreement if the State agrees to provide improvements such as paving, fencing, and lighting. In this case, the coordinator will request Property Management to prepare a lease. (See Exhibit 11-EX-33 for a typical Park and Ride lease.) Since the State is lessee, the lessor may require changes in the typical lease. The local Legal office must approve any changes.

Since there is no rent, the lease is executed at the Region/District level. Note that the Region/District Ridesharing Coordinator's approval is required on the Archive copy. The procedures in the following table should be followed when acquiring Park and Ride leases for Traffic System Management.

PARK & RIDE PROCEDURES	
Function	Procedures
Acquisition	Receive an appraisal of the fair market rent.
	Prepare a Lease Agreement using Exhibit 11-EX-33. Property Management should review and approve the lease, and the local Legal office must approve any changes in the standard lease.
	Pay the fair market rent for the entire lease term in advance in a lump sum by R/W Contract.
	Send a short-form MOS and Claim Schedule to HQ R/W, Acquisition Branch.
	Enter parcels in IRWS.
Property Management	Review the lease prepared by Acquisition prior to presenting it to the lessor.
	Forward a copy of the executed lease to HQ R/W, Property Management Branch.

11.15.07.00 Documentation for File

Right of Way's file should contain the following documentation:

- A copy of the written request for field facilities.
- Right of Way's determination on the suitability of the facilities for proposed use.
- For permanent buildings or trailer parks, include comparability of the rental rate to rates for similar facilities in the immediate area. List comparables, briefly discuss the investigation, and compare major characteristics to the subject property.
- For relocatable buildings or trailers, document informal bids and the reasons the successful bidder was chosen. Documentation shall consist of such items as rental rate, company name and location, and setup, maintenance, and removal costs. The successful bidder should be chosen based on a combination of factors such as low bid, past performance, services provided, and location of the company in relation to the site.
- Parking, services, and utilities available, if any.
- Statement that no suitable state-owned facilities are available.

- The following certification by the Agent securing the lease:

It is hereby certified that this lease is in accordance with Government Code, Section 11005, and does not constitute hiring of office space in an office building within the meaning of the code.

The procedures in this section also apply to lease amendments and renewals.

11.15.08.00 **Employee Time Charging**

Time spent by Right of Way sourced personnel to provide services to other district functions must be properly coded to ensure the charges are billed correctly. Specifically, when Right of Way personnel are requested to secure leases for field facilities for Construction's resident engineers, Construction must supply appropriate charge information.

NOTES: